

The Requirements for Community Learning and Development (Scotland) Regulations, 2013

Consultation on draft regulations

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CONSULTATION ON DRAFT REGULATIONS

The Scottish Government has prepared a draft of an SSI titled *The Requirements for Community Learning and Development (Scotland) Regulations, 2013*. We are now consulting on this draft and the closing date for comments is 26th April 2013.

The intention is that the SSI will be signed by the Minister and laid before Parliament in the week beginning 27 May. This will allow for the required period of 28 days before the summer recess and for the SSI to come into force from 1st September.

The purpose of this briefing is to

- Explain the purpose of the proposed SSI;
- Outline the existing legislative basis for CLD and the current policy context as these relate to the proposed SSI;
- Explain the legislative process that the consultation relates to;
- Present the content of the draft SSI; and
- Identify key issues for consideration in relation to the draft SSI

This will assist those with an interest in the proposed regulations to consider what comments they wish to make.

The Existing Legislative Basis for CLD

The basis for Community Learning and Development (CLD) in existing legislation for education in Scotland was outlined in 1999 in guidance from the Scottish Office Education and Industry Department (Circular 4.99):

“Local authorities provide community education as part of the exercise of their duty under section 1 of the Education (Scotland) Act 1980 to secure the adequate and efficient provision of further education.”

The 1980 Act provides a legislative basis for CLD. Other legislation including the Local Government in Scotland Act 2003 and legislation relating to equalities and human rights has important implications for the provision of CLD; those of the 2003 Act are spelt out in the statutory guidance attached to it.

However, it is clear that the legislative basis for CLD is generally perceived to be weaker than that for other areas of public services such as school education or social work.

The Current Policy Context

Reforming Public Services

In its response to the Christie Commission's report, *Renewing Scotland's Public Services*, the Scottish Government has set out its vision for how Scotland's public services need to change, the four pillars of which are prevention, performance, people and partnership.

Empowering communities is at the heart of this:

“We will empower local communities and local service providers to work together to develop practical solutions that make best use of all the resources available. The focus of public spending and action must build on the assets and potential of the individual, the family and the community rather than being dictated by organisational structures and boundaries. Public services must work harder to involve people everywhere in the redesign and reshaping of their activities.”

As essential parts of the drive to modernise public services, the Scottish Government is: developing legislation to support community empowerment; reviewing Community Planning, as a result issuing new guidance on Single Outcome Agreements in December 2012; and reforming Post-16 education.

Strategic Guidance for CLD

The Scottish Government stated its intention to work with partners to develop a CLD Strategy in the pre-legislative paper on the reform of post-16 education, *Putting Learners at the Centre* (September 2011). As

a result, Strategic Guidance for Community Planning Partnerships: Community Learning and Development was issued in June 2012 as an integral part of the wider programme of public service reform.

The Strategic Guidance identifies the purpose of CLD as being to “empower people, individually and collectively, to make positive changes in their lives and in their communities, through learning”, and indicates that, within the national performance framework, CLD’s specific focus should be on:

- improved life chances for people of all ages, through learning, personal development and active citizenship; and
- stronger, more resilient, supportive, influential and inclusive communities.

The Strategic Guidance also makes clear that the Scottish Government wishes to see CLD delivered as a core part of public services across Scotland:

“The implementation of this guidance provides the impetus for CLD to be delivered as a consistent, central element of public services in Scotland and will be based on a continuing dialogue with key stakeholders”

The need to consider legislation on CLD

Set alongside comments above on perceptions of the legislative basis of CLD as weak compared to that of other elements of public services, these expectations of the role of CLD in delivering key outcomes indicate a need to ensure that the legislative basis of CLD is robust enough to support the decision making required.

In particular, the Strategic Guidance emphasised that “the foundation of CLD delivery is an assessment – in partnership with learners and communities – of needs, strengths and opportunities” and that implementation of the Guidance should ensure that “local authorities will be supported to audit the need for CLD, in line with the proposed duty in forthcoming legislation”.

Following from this, in identifying specific responsibilities for implementation the Scottish Government made the commitment in the Strategic Guidance to “explore legislative powers for CLD and communicate progress with partners”.

What is a Scottish Statutory Instrument (SSI)

Scottish Statutory Instruments (SSIs) are subordinate legislation. Subordinate legislation is normally made under powers granted by primary legislation (statute); in this instance, powers granted by the Education (Scotland) Act 1980.

Once an Act is in place SSIs fill in the detail of how it will operate; they usually take the form of regulations or orders .

The powers of the Education (Scotland) Act 1980 as they apply to CLD

Link to the Education (Scotland) Act 1980:

<http://www.legislation.gov.uk/ukpga/1980/44/contents>

Under section 1 of the 1980 Act, education authorities have a duty to secure adequate and efficient provision of “further education”.

This duty does not include the provision of further education “within the meaning of Part 1 of the Further and Higher Education [Scotland] Act 1992” (broadly speaking, further education provided through colleges); although education authorities do have the *power* to provide further education within the meaning of the 1992 Act.

Under section 1 of the 1980 Act, further education includes:

- “Voluntary part-time and full-time courses of instruction for persons over school age”; and
- “Social, cultural and recreative activities and physical education and training, either as voluntary organised activities designed to promote the educational development of persons taking part therein or as part of a course of instruction”

Local authorities provide CLD as part of the exercise of their duty to secure adequate and efficient provision of “further education”, defined as

including (but not being restricted to) the types of courses and activities outlined.

Under Section 2 of the 1980 Act, Scottish Ministers have power to “prescribe the standards and requirements to which every education authority shall conform in discharging their functions under section 1 of this Act”.

The preamble to the draft SSI, which is titled *The Requirements for Community Learning and Development (Scotland) Regulations 2013*, makes clear that they are being made under the powers of the 1980 Act:

“The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2 of the Education (Scotland) Act 1980 and all other powers enabling them to do so.”

(The Requirements for Community Learning and Development [Scotland] Regulations 2013 - draft)

Key Issues

The SSI is intended to strengthen the legislative basis for community learning and development. In particular it is intended to support the achievement of the following policy goals:

- Communities across Scotland - but particularly those who are disadvantaged - have access to the CLD support they need.
- Communities across Scotland are enabled to express their needs for CLD provision.
- Community Planning Partnerships (CPPs), local authorities and providers of public services more generally respond appropriately to the expectations set by the CLD Strategic Guidance

It seeks to do this by setting requirements on local authorities in relation to the auditing of need for CLD, consultation and planning.

We would particularly welcome your views on the following questions:

1. How well do you think the draft SSI will help to strengthen the legislative basis for CLD?

2. Are there aspects of the draft SSI that you think could be improved?

YES / NO

If yes

- **What are they?**
- **What is the nature of the change you think should be made?**

Responding to this consultation paper

We are inviting written responses to this consultation paper by 26 April 2013. Please send your response on the completed Respondent Information Form to: CLD@educationscotland.gov.uk

or

CLD Team
Education Scotland
The Optima
58 Robertson Street
Glasgow
G2 8DU

SCOTTISH STATUTORY INSTRUMENTS

2013 No.

EDUCATION

**The Requirements for Community Learning and Development
(Scotland) Regulations 2013**

Made - - - -

Laid before the Scottish Parliament

Coming into force - -

1st September 2013

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2 of the Education (Scotland) Act 1980(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Requirements for Community Learning and Development (Scotland) Regulations 2013 and come into force on 1st September 2013.

(2) In these Regulations—

“community learning and development” includes programmes of learning and activities designed with individuals and groups to promote the educational and social development of those individuals and groups; and

“target individuals and groups” means those individuals and groups, within the area of the education authority, that the education authority considers are most likely to benefit from the provision of community learning and development.

2. An education authority is required to initiate and, having done so, to maintain and facilitate a process by which community learning and development secured within the area of the education authority is secured in a way that—

- (a) identifies target individuals and groups;
- (b) has regard to the needs of those target individuals and groups for that community learning and development;
- (c) assesses the degree to which those needs are already being met; and
- (d) identifies barriers to the adequate and efficient provision of that community learning and development.

3. In exercise of the requirement in regulation 2, the education authority is to consult with—

- (a) persons appearing to the education authority to be representative of the target individuals and groups; and

(a) 1980 (c.44). Section 2 was amended by the Education (Scotland) Act 1996 (c.43), Schedule 6 and the Self-Governing Schools etc. (Scotland) Act 1989 (c.39), section 69. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

- (b) persons appearing to the education authority to be representative of bodies providing community learning and development within the area of the education authority.

4.—(1) An education authority is required to publish a 3 year plan containing the information specified in paragraph (2) no later than 1st September in—

- (a) 2015; and
- (b) each third year after that.

(2) The plan must specify—

- (a) how the education authority will co-ordinate its provision of community learning and development with other bodies that provide community learning and development within the area of the education authority;
- (b) what action the education authority will take to provide community learning and development over the reference period of the plan;
- (c) what action other bodies intend to take to provide community learning and development within the area of the education authority over the reference period of the plan;
- (d) any needs for community learning and development that will not be met within the reference period of the plan.

(3) Before publishing a plan, the education authority must consult—

- (a) persons appearing to the education authority to be representative of the target individuals and groups for community learning and development;
- (b) persons appearing to the education authority to be representative of bodies providing community learning and development within the area of the education authority; and
- (c) such other persons as the education authority thinks fit.

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh

2013

The Requirements for Community Learning and Development (Scotland) Regulations 2013

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode

Phone

Email

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No



**The Scottish
Government**
Riaghaltas na h-Alba

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